(12)

No. 91-948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

CHURCH OF-THE LUKUMI BABALU AYE, INC., and ERNESTO PICHARDO,

Petitioners,

—v.—

CITY OF HIALEAH,

Respondent.

ON WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF OF PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, NEW JERSEY ANIMAL RIGHTS ALLIANCE, AND THE FOUNDATION FOR ANIMAL RIGHTS ADVOCACY AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF INTEREST OF AMICI CURIAE

This brief is filed on behalf of several organizations concerned with the protection and humane treatment of animals, which have a particular interest in the issue of ritual sacrifice.

People for the Ethical Treatment of Animals ("PETA"), located in Maryland, is an non-profit organization with a membership of approximately 350,000 persons. For the last ten years, PETA has been at the forefront of the animal protection movement and has promoted the humane treatment of animals throughout the United States through nationwide educational programs, sponsorship and support of federal and state legislation, and widely-publicized media campaigns to expose and prevent the abuse of animals. PETA has a keen interest in the treatment of farm animals, and has investigated numerous reports of abuse of animals in ritual sacrifice.

The New Jersey Animal Rights Alliance ("NJARA") is an non-profit organization with approximately 1,200 members that promotes the welfare of animals in the State of New Jersey. It has been active in education, investigation of animal abuse, and sponsorship of state legislation to protect animals. NJARA members have been informed of and have investigated may incidents of ritual sacrifice, especially in the Northern New Jersey urban areas, where the discarded bodies of sacrificed animals are frequently found in open areas, especially near the waterfronts. NJARA members are active in campaigns to prevent the cruel treatment of animals in such rituals.

The Foundation for Animal Rights Advocacy is a non-profit organization that seeks to ensure the legal protection of animals. Members of the Board of Directors of the Foundation have been involved in the investigation of Santeria ritual sacrifice in New York, the District of Columbia, and Florida.

Written consent of the parties for the filing of this brief has been filed with the Clerk of the Court.

SUMMARY OF ARGUMENT

The question before this Court is whether a municipality may, consistent with the first amendment to the United States Constitution and the holding of this Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), pass and enforce ordinances to prevent the unregulated killing of tens of thousands of chickens, ducks, goats and other animals within its community and ensure that animals are safely and cleanly held, humanely killed and disposed of in a way that will not endanger the health and well being of its citizens. Petitioners, members of a religious group that engages in frequent ritual sacrifice as part of its religious practices, claim that their religion is thus impermissibly burdened by the ordinances.

Amici disagree that the ordinances in question in any way violate the first amendment and this Court's holding in *Smith*. Petitioners essentially argue that the first amendment should be interpreted to afford what *Smith* specifically rejected, "a private right to ignore generally applicable laws." *Id.* at 886. Respondents are in the unusual position of being able to look to this Court's statement in *Smith* itself, in which the Court explicitly placed its imprimatur on Hialeah's regulation of animal sacrifice. The Court cited the opinion of the district court in this very case, which was affirmed by the Court of Appeals for the Eleventh Circuit, when it observed:

> [W]e cannot afford the luxury of deeming *presumptively invalid*, as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind—[such as] animal cruelty laws, see *e.g. Church of the Lukumi Babalu Aye Inc. v. City of Hialeah*, 723 F. Supp. 1467 (SD Fla. 1989) . . . The First Amendment's protection of religious liberty does not require this.

Smith, 494 U.S. at 888-89. Amici agree.

ARGUMENT

I.

THE ORDINANCES IN QUESTION ARE NEUTRAL RULES OF GENERAL APPLICABILITY

A. The Ordinances Are Facially Neutral

"Activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). In *Smith*, 494 U.S. at 878-79, this Court noted that it has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." The Court held that the first amendment does not bar application of a "neutral, generally applicable regulatory law" *id.* at 880, to conduct that is motivated by religion, for to hold otherwise would find "a private right to ignore generally applicable laws" *id.* at 886.

Petitioners argue that the Hialeah ordinances are not generally applicable and that two of the ordinances (87-52 and 87-71) facially discriminate against Santeria and other similar religions that kill various living animals as part of their rituals. Petitioners assert that ordinances 87-52 and 87-51 are invalid because they single out and prohibit animal sacrifice, which is defined as the "unnecessary killing of an animal in a ritual or ceremony not for the primary purpose of food consumption." Petitioners claim that "ritual" and "ceremony" are terms that are so laden with religious connotations that the use of these terms in the ordinances indicates that the ordinances were passed to target only religious practice and that no secular killings of animals would be prohibited by the challenged ordinances.

Petitioners thereby ignore that finding of the district court that "[t]he use of the phrase 'ritual or ceremony' in ordinances 87-52 and 87-71, does not impermissibly target religious conduct." 723 F. Supp. 1467, 1484 (S.D. Fla. 1989). The lower court opinion noted that the terms "ritual" or

"ceremony" reaches "not just demonstrably bona fide religious conduct, but also includes the killing of animals by groups that would probably not enjoy First Amendment protection, such as satanic cults." *Id.* The district court relied on *Jones v. Butz*, 374 F. Supp. 1284, 1292-93 (S.D.N.Y.), *aff'd*, 419 U.S. 806 (1974), which held that the use of the word "ritual" in the federal Humane Slaughter Act is not synonymous with "religious." The ordinances would, for instance, prohibit ritual sacrifice of animals in Voodoo or satanic ceremonies, from which Petitioners have taken pains to distance themselves in their Brief before the Court of Appeals for the Eleventh Circuit, noting that:

> Santeria has nothing to do with the Satanism that this court encountered in *McCorkle v. Johnson*, 881 F.2d 993 (11th Cir. 1989). Nor should Santeria be confused with Voodoo, a Haitian phenomenon so changed from its roots that "it is not, strictly speaking, an African religion any longer." R. Bastide [*African Civilizations in the New World*] at 138.

Brief of Appellants at 9. It would also prohibit behavior from the ritual sacrifice of animals by fraternities to the tearing off of chickens' heads by heavy metal rock bands. Because the ordinances prohibit ritual sacrifice whether performed for religious or secular reasons, the ordinances are facially neutral.

B. The Ordinances Were Not Motivated by Animosity or Discriminatory Intent Towards Petitioners' Religion

Petitioners allege that the ordinances are unconstitutional (Pet. Br. at 11). They claim that

> [The] ordinances overtly discriminate against religion. All of them were enacted for the sole purpose of suppressing a religious practice, and that is almost their only effect. All of them recognize good and bad reasons for killing animals, and classify religious reasons as bad. They are not in any sense religiously neutral or generally applicable.

The district court, however, made a specific finding of fact that:

> All the evidence established . . . that the council members' intent was to stop the practice of animal sacrifice in the City. Although this concern was prompted by the Church's public announcement that it intended to come out into the open and practice its religious rituals, including religious sacrifice, the council's intent was to stop animal sacrifice whatever individual, religion or cult it was practiced by.

723 F. Supp. at 1479. The district court made specific factual findings, affirmed by the Eleventh Circuit, that the ordinances were prompted by the City's concern to protect important interests within its police power. The district court found that the ordinances were enacted to protect important municipal interests in three areas of traditional government concern—the protection of public health, protection of the welfare of children, and prevention of cruelty to animals.

The fact that concern for these interests was heightened when the church announced its plans to open a church in the city wherein ritual sacrifice would be performed within their community does not mean that the prohibition against ritual sacrifice and slaughter evidenced discriminatory intent or effect. The City of Hialeah has no areas that are zoned for slaughterhouses. 723 F. Supp. at 1481 n.46. However, the local Şanteria adherents sacrifice an enormous number of animals each year. Based on the testimony of Petitioner Ernesto Pichardo, the district court calculated "that between 12,000 and 18,000 animals are sacrificed in initiation rites alone, during a one year period" in private homes in Dade County. *Id.* at 1473 n.22. The district court found that

> the City of Hialeah acted properly in enacting zoning regulations that clarified that ritual sacrifice was not a protected practice under the ritual slaughter exception to the Humane Slaughter Act, and that all slaughters could only be performed in areas zoned for that use.

723 F.2d at 1481.

The district court made extensive findings of fact, which were not disturbed by the Court of Appeals for the Eleventh Circuit. In urging the Court to review the question of the motivation behind the passage of the ordinances, Petitioners ignore this Court's statement in *Pullman-Standard, Inc. v. Swint*, 456 U.S. 273, 288-90 (1982), that "issues of intent [are] factual matters for the trier of fact" and therefore

> [d]iscriminatory intent here means actual motive: it is not a legal presumption to be drawn from a factual showing of something less than actual motive. Thus, a court of appeals may only reverse a district court's finding on discriminatory intent if it concludes that the finding is clearly erroneous under Rule 52(a).

Justice O'Connor, concurring in *Wallace v. Jaffree*, 472 U.S. 38, 75 (1985), in the area of establishment of religion, stated that "[i]t is particularly troublesome to denigrate an expressed secular purpose due to postenactment testimony by particular legislators or by interested persons who witnessed the drafting of the statute." Petitioners insist that the ordinances were a thinly disguised attack on their particular religious practice, clothed in concern for otherwise legitimate public safety and health concerns. Amici would agree, however, that "courts are capable of distinguishing a sham secular purpose from a sincere one." *Id.* The trial court's finding regarding the motivation behind the passage of the ordinances was not clearly erroneous and should not be reviewed by this Court.

Petitioners argue that under *Smith*, "[i]f the City recognizes that there are acceptable reasons for killing animals, then it must classify religion among those acceptable reasons. This is the lesson of *Smith* and the unemployment cases as reinterpreted in *Smith*. 494 U.S. at 877-78, 884." (Pet. Br. at 13-14). Petitioners completely misinterpret the passages from *Smith* to which they look for support. Indeed, a state would impermissibly prohibit the free exercise of religion "if it sought to ban . . . acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display." *Smith*, 494 U.S. at 877. This Court observed that the respondents in *Smith*,

> seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons. They assert, in other words, that "prohibiting the free exercise [of religion]" includes requiring any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires).

Smith, 494 U.S. at 878.

The absurdity of Petitioners' argument—that if the state allows animal killings for non-religious reasons in certain circumstances, it must demonstrate a compelling interest when the killing is for religious reasons—is demonstrated by consideration of *Smith* itself. The drug control law at issue in *Smith* was not applicable to people ingesting Schedule I drugs which were prescribed by a medical practitioner. If Petitioners' argument were correct, the Court would have been forced to hold that since Oregon recognizes legitimate reasons to engage in the conduct of taking Schedule I drugs (following the advice of a medical practitioner), then the state must allow religious reasons to be among the accepted reasons and the regulation could *not* be applied to the use of peyote by Native Americans for religious purposes without a compelling interest. This was rejected by this Court, because

> if prohibiting the exercise of religion . . . is not the object of the [law] but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. . . .
>
> . . . We have never held that an individual's religious beliefs excuse him from compliance with an otherwise

valid law prohibiting conduct that the State is free to regulate.

Id. at 878-79.

The district court expressly found that the challenged ordinances "were not passed to interfere with religious beliefs," but rather were enacted to "stop the practice of animal sacrifice in the City . . . whatever individual, religion or cult it was practiced by." 723 F. Supp. at 1479. The district court found that to the extent that Petitioners' religious conduct was affected by the ordinances, "that is incidental to the ordinances' secular purpose and effect." 723 F. Supp. at 1484. Because a generally applicable and otherwise valid ordinance prohibiting the sacrifice of animals has an incidental effect on Petitioners' religious rituals, does not mean that the decision below, which upheld the constitutionality of those ordinances, is in any way in conflict with *Smith*.

This Court should affirm the decision of the Court of Appeals for the Eleventh Circuit, which in turn affirmed the decision of the district court, that the Hialeah ordinances were neutral rules of general applicability that did not discriminate against religion.

II.

EVEN IF, CONTRARY TO FACT, THE ORDINANCES DISCRIMINATED AGAINST RELIGION, THEY WOULD BE SUPPORTED BY A COMPELLING STATE INTEREST

The district court found that "[t]he ordinances at issue were passed by the City because of the perceived need to prevent cruelty to animals, to safeguard the health, welfare and safety of the community, and to prevent possible adverse psychological effects on children exposed to such sacrifices." 723 F. Supp. at 1485.

Even if this case were to be analyzed under the standard of *Sherbert v. Verner*, 374 U.S. 398 (1963), to examine the restrictive effect of the ordinances on Petitioners' 'religious

practice, the city's enforcement of the ordinances should be upheld as constitutional. The district court found a compelling state interest that could not be achieved by less restrictive means. Indeed, Justice O'Connor, concurring in *Smith* but arguing for the application of the *Sherbert* compelling state interest test in that case, described Justice Scalia's citing of the district court opinion *in this very case* as an example of the fact that "courts have been quite able to apply our free exercise jurisprudence to strike sensible balances between religious liberty and competing state interests." *Smith*, 494 U.S. at 902. (O'Connor, J., concurring). Respondent thus presents to this Court its own explicit endorsement of the regulation of ritual sacrifice by these ordinances under both the *Sherbert* compelling state interest test and the relaxed *Smith* standard.

While *Sherbert* created the compelling state interest test to justify *some* government restrictions on religious practice, the *Sherbert* Court explicitly upheld those cases in which this Court permitted state regulation of conduct that posed some "substantial threat to public safety, peace or order." 374 U.S. at 403. The cases that the Supreme Court upheld in *Sherbert* did not talk in terms of compelling state interest. In *Sherbert*, this Court merely held that when the state sought to regulate conduct *not* generally "of a kind within the reach of state legislation," *id.*, then the state must demonstrate a compelling state interest. Clearly, the ordinances here directly address public safety, and even applying pre-*Smith* precedent would require no compelling state interest.

Even if, contrary to fact, Petitioners could characterize this case in such a way as to require the state to show a compelling state interest, the City can easily satisfy such a standard in this case. If, contrary to fact, the ordinances in question discriminated against religion, they should be upheld as a valid exercise of the state's police power serving compelling state interests.

The decision of the district court was made under a very strict standard. The district court rendered its decision prior to this Court's decision in *Smith*, under the analysis of the

stricter framework of *Grosz v. City of Miami Beach*, 721 F.2d 729 (11th Cir. 1983), *cert. denied*, 469 U.S. 827 (1984), which followed this Court's balancing test of *Sherbert v. Verner*, 374 U.S. 398 (1963). The district court interpreted *Grosz* to require that

> [b]efore the Court balances competing governmental and religious interests, the government's action faces two threshold tests: the law must regulate conduct rather than belief, and it must have both a secular purpose and effect. . . . The government in the case at hand has met both tests.

723 F. Supp. at 1483.

The extensive findings of the district court would amply meet the compelling state interest test if, contrary to fact, such a test were required in this case. The City's interest in controlling the spread of disease is a clear exercise of its police power. *See Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166-67 (1944). The City has a compelling interest in prohibiting the slaughter or sacrifice of animals within areas of the city not zoned for slaughterhouses. *See In re Slaughter-House Cases*, 83 U.S. 36 (18 Wall. 1872). The protection of animals from the cruelty of animal sacrifice is also of central concern to the City. *See Humane Society of Rochester v. Lying*, 633 F. Supp. 480 (W.D.N.Y. 1986); *Animal Legal Defense Fund v. Provimi Veal Corp.*, 626 F. Supp. 278 (D. Mass. 1986), *aff'd*, 802 F.2d 440 (1st Cir. 1986). Of course, there is a particularly strong interest in securing the welfare of children. *See New York v. Ferber*, 458 U.S. 747 (1982); *Prince v. Massachusetts*, 321 U.S. 158 (1944). The opinion of the district court was rendered after an analysis of the ordinances under the stricter standard which the petitioners erroneously argue is required in this case, and the judgment below should be affirmed.

The district court made extensive factual findings on these three concerns. Amici seek to emphasize to the Court that these factual findings were not clearly erroneous and indeed, were supported by the testimony and affidavits of experts

who have dealt with the extreme cruelty inflicted on animals awaiting and suffering ritual sacrifice; with the problems of health associated with the disposal of the carcasses of sacrificed animals; with the trauma experienced by communities who are exposed to ritual slaughter in urban areas and may be confronted with the bodies of the slaughtered animals; and with the problems of any attempt to regulate rituals which occur in the inner sanctums of places designated for Santeria worship within city dwellings that are frequently part of multi-family dwelling units.

The City's concern about cruelty to animals is not trivialized by Petitioner's attempts to denigrate the efforts of the community to ensure the humane treatment of animals by discussing other instances in which the killing of animals is permitted, whether for food, or for pest or population control. The Florida Supreme Court noted that "it is now generally recognized that legislation which has for its purpose the protection of animals from harassment and ill-treatment is a valid exercise of the police power." *C.E. America, Inc. v. Antorini*, 210 So.2d 443, 444 (Fla. 1968).

Petitioners seriously mischaracterize the nature of the evidence presented to the district court which led it to conclude that Santeria sacrifice was inhumane. Petitioners assert that "The animals are sacrificed by cutting the carotid arteries with a single knife stroke. Pet. App. A12. Cutting the carotid arteries is approved as humane by both Florida and federal statutes on religious slaughter." (Pet. Br. at 38).

The federal Humane Slaughter Act accepts two methods of slaughter as humane. It states:

> No method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane. Either of the two following methods of slaughtering and handling are hereby found to be humane:
>
> (a) in the case of cattle, calves, horses, mules, sheep, swine, and other livestock, all animals are rendered

> insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or
>
> (b) by slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.

7 U.S.C. § 1902 (1988). The Florida statute, Fla. Stat. Ann. § 828(7)(b) (Br. App. A7) has similar provisions.

The district court gave considerable explanation of the Santeria method of sacrifice in its findings of fact and summarized the testimony of Petitioner Pichardo, a high priest of the church, concerning the method of sacrifice, which is effected by puncturing the neck of the animal by a single stab with a four-inch knife.

> The knife is inserted into the right-hand side of the animal's neck and is pushed all the way through the animal's neck. The knife does not actually cut the throat of the animal, but instead goes directly into the vein area, just behind the throat, and in front of the vertebrae.

723 F.2d at 1472. This is not similar to the Jewish or Muslim methods of administering a single knife stroke to cut the animal's neck and carotid arteries which satisfies the conditions for exemption from the Humane Slaughter Act requirement of stunning before killing. Although the district court noted that Pichardo testified that this "hopefully would sever both of the main arteries" the district court was convinced by the expert testimony that,

> this method of killing is not humane because there is no guarantee that a person performing a sacrifice in the manner described can cut through both carotid arteries at the same time. Additionally, some of the lining of the

> artery can recoil and close the artery to prevent the instant hemorrhaging, in a tourniquet effect. [T]his Court finds, that the method used by the priest is not a reliable or painless method of severing both carotid arteries. . . .
>
> . . . Only a complete neck severance can make it clear that the arteries have all been severed and a stabbing or poking is not acceptable either from a traditional standpoint or a humane standpoint.

Id. at 1472-73.

Congress was able to determine that the exemption for slaughter according to the Jewish tradition or similar traditions met standards of humane treatment, because a great deal of information was gathered concerning such practices. The Hearings on the Humane Slaughter Act considered testimonials of physiologists and other members of the scientific community on the issue of the humaneness of the Jewish method of slaughter. *See* Humane Slaughtering of Livestock, Hearings Before a Subcommittee of the Senate Committee on Agriculture and Forestry on S.1636, 84th Cong., 2d Sess. (1956). Senator Hubert H. Humphrey, chair of the Subcommittee, stated on the floor of the Senate during the debate on the Bill that

> because the subject matter of kosher slaughter came before the committee, we asked for scientific information relating to the matter. A substantial body of evidence was presented . . . Not only is such a procedure accepted as a humane method of slaughter, but it is also so established by scientific research.

104 CONG. REC. 15391 (1958). In *Jones v. Butz*, 374 F. Supp. 1284, 1291 (S.D.N.Y. 1974), *aff'd*, 419 U.S. 806 (1974) in which the exemption for ritual slaughter in the federal Humane Slaughter Act was upheld in the face of a challenge concerning the establishment of religion, the court noted found "a persuasive showing that Jewish ritual slaughter, as a fundamental aspect of Jewish religious practice, was histor-

ically related to considerations of humaneness in times when such concerns were practically non-existent."

Moreover, the slaughter of animals according to a religious method that is humane under the Humane Slaughter Act is still heavily regulated. Virtually all such slaughter is subject to the provisions of the Meat Inspection Act. 21 U.S.C. §§ 601-645 (1967). Ritual slaughter that is exempted under the federal Humane Slaughter Act is regulable and regulated. Santeria sacrifice, as described by the Petitioners in the instant case, is a secretive act, performed away from the congregation, who are not initiated into its practices.

The district court reported that Dr. Perez, a sociologist, testified that "the outcome of this case would not necessarily affect the degree to which Santeria was practiced in private," 723 F. Supp. at 1470, because, as Dr. Perez testified, "[t]here may be a lot of Santeros who do not wish to place their belief on a public sort of marketplace." *Id.* at 1470 n.8.

This is confirmed by the writings of Santeria practitioners. Migene Gonzalez-Wippler, who has written extensively on Santeria practices and stresses the positive power of Santeria rituals, notes that the initiation ceremony, in which a large number of animals are sacrificed, takes place in a hidden sanctuary, away from the rest of the congregation who are not initiates. At such a ceremony, a variety of animals are killed. "While the standard practice is to sacrifice sheep, goats, hens, roosters, and pigeons to all the saints, the female orisha like Yemaya would also require ducks among the offerings. Chango, on the other hand, would want turtles, and the warrior gods . . . would need no less than three possums." M. Gonzalez-Wippler, *Santeria: African Magic in Latin America* 35-36 (1987). She notes:

> The asiento [initiation ceremony] can be attended only by the initiate, his sponsor, the babalawo, whose duty it is to sacrifice the animals, and other santeros. Only those who have already "made the saint" can be present at the ceremony. . . . The madrina [sponsor] then tears off the head of a chicken and offers its warm blood to

> the yaguo [the initiate] who drinks it thirstily. When the initiate awakens from his trance he sits on a throne that is erected for him . . . He sits there majestically surveying the ritual sacrifices of all the animals, and drinks a little of the blood of all the decapitated heads as they are offered to him by the yubbona [sponsor].

Id. at 36-37.

The district court reported that

> Pichardo could give this Court no assurance that those who follow, in his eyes, a deviant form of Santeria, would conform to any regulation at all. Additionally, the religion has always been a secret religion and much is still not known. It is inconceivable that the religious practitioners would accept the type of regulatory controls on their activities that such conformity would require, especially in light of the fact that their sacrifice, by the terms of their religion, must be kept secret and cannot be monitored. A less restrictive ordinance simply could not be enforced.

723 F. Supp. at 1487 n.59. There is, therefore, no less restrictive means than the complete prohibition of such ritual sacrifice that could effectively regulate it to meet the City's legitimate concerns for human and animal welfare.

The disposal of the bodies of sacrificed animals is also unregulable by the city. Although Petitioners characterize the process as no more problematic that the disposal of restaurant or household scraps of meat, they do not mention the numerous ritual requirements for disposal of bodies which would not be satisfied if the bodies were picked up in plastic bags on the usual sanitation worker's route. The disposal of animal carcasses in urban areas would be part of the church's rituals, for example, in the ceremony where a representation of the head of the god Eleggua is made from sandstone or concrete and, once properly dedicated, is used for divination, luck and protection.

> Once finished, the head is buried on a crossroads before sunrise so that Eleggua's spirit, which owns all crossroads, will enter the image and fill it with all his powers. Seven days later, the babalawo or santero who prepared the image will dig it out of the ground. The hole in which the image was buried is consecrated with the blood of three roosters, and then filled with the bodies of the sacrificed animals, toasted corn, bananas, candies and a generous shot of rum. It is finally covered with earth. . . .

M. Gonzalez-Wippler, *The Santeria Experience* at 160-61. The important elements of secrecy that surround the ritual sacrifices and the persons who perform them support the City's position that there was no less restrictive means than complete prohibition of such sacrifices to effect their valid concerns about public health, safety and welfare.

The church wishes to engage in sacrifice. It is not engaged in slaughter because its activity is not primarily "the killing of animals for food" as defined in Ord. 87-72. The primary purpose behind the ritual sacrifice of animals in Santeria is the sacrifice and offering of a life to the gods. It is far removed from the rituals of the Jewish or Muslim faith that are designed to ensure that the animal receives a "humane death" when it is killed primarily for food. Gonzalez-Wippler emphasizes this aspect of sacrifice, rather than ritual slaughter, when she describes the first time she witnessed a sacrifice:

> This was the first time I saw an animal sacrifice, and my knees and my teeth knocked together all through the ceremony. In an animal sacrifice there is something primeval, something deeply connected with the collective unconscious of the race. It is all so simple. A quick twist of the hand, and the chicken's head is gone, and a thick stream of dark-red, hot blood is steaming from the severed neck. But it is not the beheading of the animal that is so earth-shaking. It is the giving of the blood, the

> acceptance that blood is the life, the spirit; and that it is being returned to the divine source from where it came.

M. Gonzalez-Wippler, *The Santeria Experience* 47 (1982).

Moreover, if the church was engaged in slaughter, the district court found that the method of killing could not be considered humane and thus entitled to the exemptions provided for humane ritual slaughter under Florida and federal statutes protecting ritual slaughter. The church's activities *are* subject to the state anti-cruelty statute, however. If the members of the church took an animal and stabbed it to death in their homes in the method described by petitioner Pichardo, outside the context of a religious ceremony, they would be subject to prosecution for cruelty to animals. Petitioners are incorrect to characterize religion as one of the only reasons considered "bad" for killing animals. Petitioners seek exemption from the application of a neutral, generally applicable ordinance because their behavior which violates that ordinance is religiously motivated. It has long been established that "the [First] Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940) (footnote omitted).

The City showed that the ordinances in question were passed to protect interests of paramount importance to the City. These interests satisfy any argued necessity of demonstrating a compelling state interest to withstand a challenge to these ordinances on the grounds that they impermissibly restrict the free exercise of religion.

CONCLUSION

Amici do not suggest that the problems of restriction on religious practice that conflicts with valid, neutral state regulations should be resolved lightly in favor of uniform state regulation goals. The essence of religious freedom, especially in an increasingly multicultural society, is toleration of practices that differ considerably from the common experience of the majority and which seem strange and exotic to non-initiates.

It is clear, however, that the states must have the right to safeguard important secular goals of safeguarding the health and welfare of their citizens, without permitting exceptions to uniform enforcement of public health and safety laws for those whose religious practices conflict with generally applicable regulations. Moreover, the states must be free to ensure that animals are not subjected to cruel treatment.

Amici are very familiar with the ritual sacrifices that the Santeria church wishes to perform within Hialeah, and recognize that such practices pose real threats to the public health concerns that the City wishes to promote. Amici wish to stress that the factual findings of the district court, far from being clearly erroneous, which is the only ground upon which this Court should consider disturbing those findings, identify important state concerns that are being confronted by municipalities across the country who are becoming more aware of the practices of ritual sacrifice.

It must remain within the police power of the state to prohibit practices, performed for secular or religious purposes, that cannot be regulated in such a way as to ensure that paramount public health and safety concerns are not threatened. Amici strongly exhort this Court to uphold the constitutionality of the enactment and enforcement of the Hialeah prohibition of ritual sacrifice of animals.

Respectfully submitted,

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